



DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 332 and 352

RIN 0991–AC32

Department of Health and Human Services Acquisition Regulation - Electronic Submission and Processing of Payment Requests

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or the Department) finalizes its proposed regulation amending the Department’s Federal Acquisition Regulation Supplement, the HHS Acquisition Regulation (HHSAR), to support the HHS Electronic Invoicing Implementation Project and HHS’s transition to the Department of the Treasury’s Invoice Processing Platform. This complies with Office of Management and Budget (OMB) memorandum M-15-19, Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing, issued on July 17, 2015.

DATES: This final rule is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Shari Shor, Procurement Analyst, Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Acquisition Policy, 200 Independence Avenue, S.W, Washington, DC 20201. Email: Shari.Shor@hhs.gov. Telephone: (202) 731-3383.

I. Provisions of the Proposed Rule and Analysis of and Response to Public Comments

In the October 14, 2021 **Federal Register** (86 FR 57102), HHS published a proposed rule titled “Department of Health and Human Services Acquisition Regulation - Electronic

Submission and Processing of Payment Requests”. In response to the publication of that proposed rule, HHS received 2 comments from members of the public. In the following sections of this final rule, HHS includes a summary of the provisions of the October 14, 2021 proposed rule, the public comments received, HHS’s responses to the comments, and any changes made to the regulatory text as a result.

Comment: One commentor provided HHS with strong support for the proposed rule, indicating the proposed electronic submission and processing of payment requests will provide a more efficient and cost-effective solution for HHS and the general public.

Response: HHS appreciates the comments and agrees that the benefits of electronic submission and processing of payment requests to support the HHS Electronic Invoicing Implementation Project and HHS’s transition to the Department of the Treasury’s Invoice Processing Platform, will generally outweigh any administrative costs associated with the transition. The HHS Electronic Invoicing Implementation Project will bring HHS in compliance with the OMB Memorandum M-15-19, Improving Government Efficiency and Saving Taxpayer Dollars through Electronic Invoicing, issued on July 17, 2015 which directed federal agencies to transition to electronic invoicing for appropriate federal procurements. Implementation of these solutions will improve citizen and business facing services, improve consistency, automate workflows, improve the transparency of invoice status, and support specific business needs identified across HHS while maintaining compliance with the OMB and Treasury requirements.

Comment: One commenter raised concern with the timing of the inclusion of the clause in new and existing contracts and the confusion that may be caused with tracking payment requests submitted prior to and after the change in invoice submission requirements.

Response: HHS appreciates the commenters concern and agrees additional information on the invoice submission process is necessary to mitigate any administrative confusion for the tracking of payment requests during the transition period. Since the HHS operating divisions utilize various accounting systems and their internal processes and procedures may vary

depending on the systems they utilize, the HHS operating divisions will be issuing Payment Instructions to their respective contractor community with specific invoice submission instructions related to their internal policies, procedures, and processes.

II. Required Rulemaking Analyses

A. Executive Orders 12866 and 13563: Regulatory Planning and Review Analysis

HHS examined the effects of this rule as required by E.O. 12866, “Regulatory Planning and Review,” 58 FR 51,735 (Oct. 4, 1993), E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821, (Jan. 21, 2011), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits. A Regulatory Impact Analysis must be prepared for major rules with economically significant effects. The Department has determined that this rulemaking is not a significant regulatory action under these Executive Orders. In addition, the Department does not anticipate that this rulemaking will impose measurable costs on regulated parties. The Office of Management and Budget (OMB) has waived review on this rule.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Section 202(a) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a), requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.” In 2020, that threshold was \$158 million. HHS does not expect this rule to exceed the threshold.

B. Regulatory Flexibility Act and Executive Order 13272

The Department has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996 (Pub. L. 104-121), which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. The Department considers a rule to have a significant impact on a substantial number of small entities if the rule has at least a three percent impact on revenue on at least five percent of small entities. As a result, the Department has determined, and the Secretary certifies, that this final rule does not have a significant impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, “Federalism,” 64 FR 43,255 (Aug. 10, 1999), establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State, local, and tribal governments or has federalism implications. The Department has determined that this final rule does not impose such costs or have any federalism implications.

D. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department has reviewed this final rule and has determined that it does not create new collections of information.

List of Subjects in 48 CFR Parts 332 and 352

Government procurement.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 48 CFR chapter 3, parts 332 and 352, as follows:

PART 332 – CONTRACT FINANCING

1. The authority citation for part 332 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

2. Add subpart 332.70 to read as follows:

Subpart 332.70 – Electronic Submission and Processing of Payment Requests

Sec.

332.7000 Scope of subpart.

332.7001 Definitions.

332.7002 Policy.

332.7003 Contract clause.

Subpart 332.70 - Electronic Submission and Processing of Payment Requests

332.7000 Scope of subpart.

This subpart prescribes policies and procedures for electronic submission and processing of payment requests.

332.7001 Definitions.

Payment request, as used in this subpart, is defined as a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request

must comply with the requirements identified in FAR 32.905(b), Content of invoices, and the applicable Payment clause included in this contract.

332.7002 Policy.

(a) Contracts shall require the electronic submission of payment requests, except for—

(1) Purchases paid for with a Government-wide commercial purchase card; and

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise classified information or national security.

(b) Where a contract otherwise requires the electronic submission of invoices, the Contracting Officer may authorize alternate procedures only if the Contracting Officer makes a written determination that:

(1) The Department of Health and Human Services (HHS) is unable to receive electronic payment requests or provide acceptance electronically;

(2) The contractor has demonstrated that electronic submission would be unduly burdensome; or

(3) The contractor is in the process of transitioning to electronic submission of payment requests, but needs additional time to complete such transition. Authorizations granted on the basis of this paragraph (b)(3) must specify a date by which the contractor will transition to electronic submission.

(c) Except as provided in paragraphs (a) and (b) of this section, HHS officials shall process electronic payment submissions through the Department of the Treasury Invoice Processing Platform or successor system.

(d) If the requirement for electronic submission of payment requests is waived under paragraph (a)(2) or (b) of this section, the contract or alternate payment authorization, as applicable, shall specify the form and method of payment request submission.

332.7003 Contract clause.

Except as provided in 332.7002(a), use the clause at 352.232-71, Electronic Submission of Payment Requests, in all solicitations and contracts.

PART 352 – SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

4. Add section 352.232-71 to read as follows:

352.232-71 Electronic submission of payment requests

As prescribed in HHSAR 332.7003, use the following clause:

Electronic Submission of Payment Requests

(a) *Definitions.* As used in this clause—

Payment request means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), “Content of Invoices” and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Department of Treasury Invoice Processing Platform

(IPP) or successor system. Information regarding IPP, including IPP Customer Support contact information, is available at www.ipp.gov or any successor site.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with HHS procedures.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of Clause)

Xavier Becerra

Secretary

[FR Doc. 2022-02134 Filed: 2/1/2022 8:45 am; Publication Date: 2/2/2022]